

# Standard Terms & Conditions of Sale

## 1. DEFINITIONS

"Company" means Rubek Automatic Doors ABN 91 254 300 376 of Unit 2, 79 Achievement Way, Wangara, WA 6065.

"Conditions" means these terms and conditions.

"Contract" means any contract between the Company and the Customer for the sale and purchase of Supplies.

"Customer" means the person(s) or company whose order for the Supplies is accepted by the Company.

"Goods" means any goods supplied or to be supplied by the Company to the Customer, and includes their packaging and any replacement goods supplied under these Conditions.

"GST" means goods and services tax under the A New Tax System (Goods and Services Tax) Act 1999.

"Services" means any services supplied or to be supplied by the Company to the Customer, and includes any technical advice, repair or maintenance services provided by the Company or its technical representatives in connection with Goods.

"Supplies" means any Goods or Services.

"in writing" includes electronic communications.

Reference in these Conditions to any legislation or regulation includes any re-enactment, amendment or substitution of such legislation or regulation.

## 2. CONDITIONS

All orders are accepted by the Company subject to and in accordance with these Conditions.

These Conditions override and exclude any terms or conditions in or referred to in any negotiations or course of dealing between the Company and the Customer or set out in the Customer's standard terms and conditions to the fullest extent permitted by law. If there is any conflict between

- the other provisions and these Conditions; or
- the provisions of the order for the Supplies and these Conditions.

these Conditions will prevail unless the Company agrees otherwise in writing. Together with any terms accepted in writing by the Company in connection with an order, these Conditions constitute the entire agreement between the Company and the Customer in relation to the Supplies ordered. No variation to these Conditions is permitted unless expressly authorised in writing by a director of the Company.

## 3. PRICES AND GST

Prices stated are in Australian dollars, exclusive of GST or other duties or taxes and any applicable transport and handling charges, which will be added at the time of despatch. Prices charged will be those prevailing when an order is accepted.

The Company will issue a tax invoice to the Customer in relation to any supply that is subject to GST.

The amount of GST payable will be calculated by multiplying the sum of the price for the supplies plus any additional freight or other charges by the rate of GST applicable at the time of the supply. The words "supply" and "tax invoice" in this Condition 3 have the same meaning as that given to them in the A New Tax System (Goods and Services Tax) Act 1999.

## 4. PAYMENT

Where credit terms have been approved, payment is due not later than 30 days for production orders and 7 days for service orders from the date of invoice, without any deductions, withholding or set off. Time for payment is of the essence. If the Customer fails to make payment by the due date then, without prejudice to any other right or remedy, the Company shall be entitled to:

- cancel the order or suspend any further deliveries or performance;
- appropriate any payment made by the Customer to such of the Supplies (or the Supplies made under any other contract) as the Company may think fit; and

iii. charge interest (both before and after any judgment) on the amount unpaid at the rate of 2% per annum above the Reserve Bank of Australia's published official interest rate.

The Company reserves the right to charge for copy invoices or credit notes where the original has been lost or misplaced by the Customer. If legal action is taken to recover monies due to the Company, then the Company reserves the right to charge the Customer an amount to cover all and any costs (including legal costs) incurred by the Company.

## **5. NEW ACCOUNTS**

A Customer wishing to open a credit account must furnish such information as may be requested by the Company and the Company may make a search with a credit reference agency. The Company reserves the right in its absolute discretion to grant, refuse, suspend or discontinue any credit facilities or reduce or suspend any credit limit at any time.

## **6. ORDERS**

The Company reserves the right to decline to trade with any company or person, or to accept orders for Supplies in part.

To avoid duplication, written confirmation of telephone orders must be clearly marked 'Confirmation only'.

The Company will not accept liability for orders not so marked and duplicate orders will be charged accordingly.

Once accepted, no order may be cancelled or reduced without the prior written agreement of a director of the Company.

Orders for Goods are usually accepted by the Company by despatching the Goods provided, however, that despatch will not be acceptance where the price for the Supplies has been incorrectly quoted or referenced by the Customer in its order.

## **8. DELIVERY**

The Company will use reasonable endeavours to meet delivery and/or performance estimates but, except as set out in Condition 9 below, in no circumstances shall it be liable to compensate the Customer for non-delivery, non-performance or late delivery or performance, even where it arises as a result of the negligence of the Company or its carriers. Time for delivery and/or performance shall not be of the essence. Delivery will be made to the address specified by the Customer. The Company may use any method of delivery available to it.

When selecting a delivery method that includes '**No Signature Required**', the Customer is authorising the Goods to be left at their unattended premises. The Company does not accept any responsibility for loss or damage which results from choosing this delivery method.

## **9. INSPECTION, DEFECTS AND NON DELIVERY**

The Customer must inspect the Supplies as soon as is reasonably practicable after delivery or, in the case of Services, performance. Except as otherwise set out in Conditions 13 or 14 below, the Company shall not be liable under these Conditions for a defect in the Supplies, incomplete or failed delivery, shortage of quantity of Supplies unless written notice is given to the Company within 10 days of the date of inspection.

The quantity of any consignment of Goods, as recorded by the Company upon despatch from the Company's place of business, shall be conclusive evidence of the quantity received by the Customer on delivery, unless the Customer can provide conclusive evidence to the contrary. The Company will not be liable for any non-delivery of Goods or non-performance of Services unless written notice is given to the Company within 10 days of the date when Goods should have been delivered or the Services performed in the ordinary course of events.

Any liability of the Company for non-delivery or non-performance or for Goods notified as defective on delivery or Services notified as defective following performance in accordance with this Condition 9 will be limited to replacing the Goods or re-performing the Services within a reasonable time or to refunding the price then paid in respect of such Supplies.

## **10. RETURNS**

Prior to returning any Goods to the Company for any reason, the Customer must contact the Company. All Goods are returned at the Customer's risk and expense and should be undamaged by the Customer and in their original packaging. The Customer is responsible for returning Goods to the Company and for providing proof of delivery of such return.

The Company operates a 14 day return policy. To be accepted for return on this basis, Goods must be returned in their original condition for receipt by the Company within 14 days of delivery.

Any Goods returned after 14 days as 'unwanted' or 'incorrectly ordered' may be accepted at the discretion of the Company but may be subject to a restocking fee of 20% of the invoice value of the Goods.

All cancelled orders are subject to a 20% restocking fee.

## **11. RISK AND OWNERSHIP**

The risk of damage to or loss of Goods will pass to the Customer when the Goods are unloaded from the Company's carriers at the Customer's premises. Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due from the Customer to the Company for those Goods.

Until ownership passes to the Customer, the Customer must hold the Goods on a fiduciary basis as the Company's bailee, insure the Goods against all usual risks to full replacement value, not pledge or allow any lien, charge or other interest to arise over Goods, and store each delivery of Goods separately, clearly identified as the Company's property and in a manner to enable them to be identified and cross referenced to particular invoices where reasonably possible. The Customer may use or sell Goods in the ordinary course of business, provided that the Customer will be agent for the Company in any sale if Goods are sold.

The Company's rights as an unpaid seller will not be affected by the Company retaining title to Goods under this Condition 11.

If any payment for Supplies is not received in full by the due date, or the Customer becomes bankrupt, passes a resolution for winding up or a court shall make an order to that effect, or a receiver or administrator is appointed over any assets or the undertaking of the Customer or an execution or distress is levied against the Customer, the Customer shall not sell, use or part with possession of the Goods, and the Company shall be entitled, without previous notice and without prejudice to the Company's other remedies, to retake possession of the Goods and for that purpose to enter upon any premises occupied or owned by the Customer. The Customer waives the right to receive any notice in connection with the Company taking possession of the Goods.

If the Goods are mixed, processed or used so that they lose their identity or are irrevocably incorporated in, mixed with or applied to other goods to make another item, then ownership of the Goods will pass to the Customer, however a portion of proceeds of sale of any such item equivalent to the cost for the unpaid Goods remains in trust for the Company until payment for the Goods is made in full.

## **12. PERFORMANCE AND FITNESS FOR PURPOSE**

Subject to Condition 16:

(i) unless any performance figures, tolerances or characteristics have been specifically and expressly warranted by a director of the Company in writing, the Company accepts no liability for any failure of the Supplies to comply with such criteria, whether attributable to the Company's negligence or otherwise; and  
(ii) the responsibility for ensuring that Supplies are sufficient and suitable for a particular purpose is the Customer's, unless specifically stated in writing by a representative of the Company. Any advice or recommendation given by an employee of the Company which is not confirmed in writing is acted on entirely at the Customer's risk and the Company shall not be liable for any such advice or recommendation which is not so confirmed. Except as set out in Condition 14, the liability of the Company to the Customer, should any warranty, statement, advice or recommendation confirmed in accordance with this Condition 12 prove to be incorrect, inaccurate or misleading, will be limited to the refund of the price paid for the Supplies or, at the Company's option, the supply of replacement Supplies which are sufficient and suitable.

## **13. WARRANTY / GUARANTEE**

**This statement applies only if you are a 'consumer' for the purpose of the Australian Consumer Law.**

The Company will, free of charge, repair Goods which are proved to the reasonable satisfaction of the Company to be damaged or defective due to faulty materials, workmanship or design for a period of 12 months after despatch of the Goods. The Company warrants Goods for 24 months and labour for 12 months. Additional lifetime warranty applies to the Rubek sliding door operator housings where complete operators are installed as per information in relevant Rubek drawings and information provided on a project specific basis. 'Lifetime' is defined as the usable life of the building the operator is installed in.

On receipt, the Customer must notify the Company in writing of the defect within 10 days of the date of inspection in accordance with Condition 9.

Any replacement Supplies made or Goods repaired under this Condition 13 will be guaranteed on these terms for any unexpired portion of the period of guarantee given on the original Supplies. Any Goods which have been replaced will belong to the Company.

The Customer grants to the Company and its employees, agents and representatives a right to enter onto its premises to effect any repair or replacement under this Condition 13. The Customer shall ensure that the Company's employees, agents and representatives are provided with a safe and secure working environment while at its premises.

**FURTHER INFORMATION AND MAKING A CLAIM**

Please contact the Company with any queries regarding this warranty or if you wish to make a warranty claim:

Phone: (08) 9302 3200

Email: sales@rubek.com.au

The Customer will be responsible for the return of any Goods that are the subject of a warranty claim in accordance with Condition 10.

**14. EXCLUSION OF LIABILITY**

This Condition 14 sets out:

- the full extent of the Company's obligations and liability to the Customer with respect to the Supplies under any Contract; and
- all other terms, conditions, warranties and representations that might otherwise be implied by statute or otherwise, are hereby expressly excluded, save for those that cannot be excluded, restricted or modified by law.

To the fullest extent permitted by law and subject only to any express exceptions contained in these Conditions, the Company will be under no liability to the Customer whatsoever (whether in contract, tort, (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct or indirect or consequential loss (all of which terms include, without limitation, pure economic loss, loss of profits, loss of business, loss of use, loss or cost of recovery of data, computer downtime, depletion of goodwill, business interruption, increased purchasing or manufacturing costs, loss of opportunity, loss of contracts and like loss) howsoever caused or arising out of or in connection with:

- Any of the Supplies, or the manufacture, sale, performance or supply or failure or delay in performance or supply of the Supplies by the Company or on part of the Company's employees, agents or sub-contractors;
- Any breach by the Company of any of the express or implied terms of the Contract;
- Any use made or resale or on-supply of any of the Supplies or any product incorporating any of the Goods or developed using the Supplies;
- Any acts or omissions of the Company at the Customer's premises;
- Any statement made or not made or advice given or not given by or on behalf of the Company, including as to compliance with legislation or regulation;

- Or otherwise under the Contract.

The Company does not exclude, restrict or modify any liability that cannot be excluded, restricted or modified by law including liability under the Competition and Consumer Act 2010. However, where such statutory provisions apply, or where the Customer is entitled to claim under an express provision of these Conditions (including Conditions 9, 11, 12 and 13), then to the extent permitted by law the Company's total liability shall be limited at its option to:

- in the case of a supply of Goods, either the replacement of the Goods; or supply of equivalent Goods; or the payment of the cost of replacing the Goods; or the payment of the cost of acquiring equivalent Goods; or the repair of the Goods; or the payment of the cost of having the Goods repaired; or
- in the case of a supply of Services, either the supply of the Services again; or the payment of the cost of having the Services supplied again.

Each of the Company's employees, agents and sub-contractors may rely on and enforce the exclusions and restrictions of liability in these Conditions (including Conditions 9, 11, 12, 13 and 14) in that person's own name and for that person's own benefit.

## **15. INTELLECTUAL PROPERTY RIGHTS**

No right or licence is granted to the Customer, except the right to use or re-sell the Goods in the Customer's ordinary course of business.

The Company owns full copyright in respect of manuals, web site content and all Products. Reproduction in whole or part is prohibited without the Company's prior written consent.

## **16. USE OF PERSONAL INFORMATION**

"Personal Information" means, any information or opinion in any form, whether true or not, about the Customer and any representative who places an order on behalf of the Customer or who is named in that order, who is a living individual and whose identity is apparent or can be reasonably ascertained from the information or opinion.

The Company may collect and disclose Personal Information received from the Customer or from third parties for all purposes contemplated in these Conditions or arising in the context of the relationship between the Company and the Customer including:

- i. Deciding whether to enter into any contract or arrangement with that Customer. This may include assessment of the Customer's application for a commercial credit account, conducting commercial and consumer credit reference searches against a Customer and any representative who places an order on behalf of the Customer or who is named in that order and the disclosure of information to a credit reporting agency as to how that Customer conducts its account;
- ii. Order fulfilment, administration, customer services and to help to review, develop and improve the Company's business and the goods and services it offers;
- iii. Crime prevention, detection of unlawful activities; or
- iv. When required by law.

The collection and disclosure of the Personal Information may involve:

- i. The disclosure of that Personal Information to the Company's service providers and agents;

The Company may hold Personal Information on a database to be used by the Company for order fulfilment, administration, marketing, credit checking, security, customer services, profiling the Customer's purchasing preferences and to help the Company to understand and develop its business, including new and innovative products and services.

By placing an order, the Customer and any representative who places an order on behalf of the Customer or who is named in that order is taken to consent to the collection and disclosure of Personal Information set out in this Condition 16. Where the Personal Information relates to an individual other than the Customer, the Customer agrees that he or she has the authority of that individual to consent on their behalf. If, at any time, the Customer or its representatives does not wish his or her Personal Information to be used for any or all of the purposes set out in this Condition 16, he or she should contact the Marketing Manager or notify any

of our sales representatives when placing an order by phone. This may curtail the service which the Company can offer and the Company may need to vary the terms of the Contract accordingly.

For more information on the Company's use of personal data please see the Company's privacy statement on its website.

### **17. PROMOTIONS**

In the event that the Company sends promotional material to the Customer in relation to goods or services available from the Company, these Conditions shall apply to all Supplies purchased from such material.

### **18. EXPORT**

These Conditions do not apply to the supply of Supplies by the Company to Customers outside Australia. The Customer is responsible at its own expense for obtaining any licence and complying with any export regulations in force within Australia and in the country for which the Goods are destined. The Company reserves the right not to supply certain persons or countries and to require from the Customer full details of the end use and final destination of the Goods.

### **19. FORCE MAJEURE**

The Company shall not be liable to the Customer in any manner or be deemed to be in breach of these Conditions because of any delay in performing or any failure to perform any of the Company's obligations under this Contract if the delay or failure was due to any cause beyond the Company's reasonable control (which shall include, but not be limited to government actions, war, fire, explosion, flood, import or export regulations or embargoes, labour disputes or inability to obtain or a delay in obtaining supplies of Goods or labour). The Company may, at its option, delay the performance of, or cancel the whole or any part of a Contract.

### **20. GENERAL**

Any provision of these Conditions of Supply which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of these Conditions and the remainder of such provision shall not be affected. Failure by the Company to enforce or partially enforce any provision of these Conditions will not be constrained as a waiver of any rights under these Conditions.

The Company shall be entitled, without the consent of or notice to the Customer, to assign the benefit, subject to the burden, of these Conditions and/or any Contract to a related body corporate (as defined in section 50 of the Corporations Act 2001) at any time.

**These conditions supersede all previous terms and conditions which have previously governed a contract for the sale of Supplies from the Company to the Customer.**

**March 2012**